

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EDDIE ARMAIL JULIAN-BEY,

Plaintiff,

v.

Case No. 4:23-cv-10445  
Honorable Jonathan J.C. Grey

GRETCHEN WHITMER et al.,

Defendants.

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**OPINION AND ORDER DISMISSING COMPLAINT**

Michigan prisoner Eddie Armail Julian-Bey (“Plaintiff”), presently confined at the Gus Harrison Correctional Facility in Adrian, Michigan, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Having reviewed the complaint, the Court dismisses it without prejudice for being duplicative of a previously filed civil rights complaint.

**Standard of Review**

Plaintiff has been granted leave to proceed without prepayment of the filing fee for each of these actions. Under the Prison Litigation Reform Act, the Court is required to sua sponte dismiss an *in forma pauperis* complaint before service on a defendant if it determines that the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant

who is immune from such relief. *See* 42 U.S.C. § 1997e(c); 28 U.S.C. § 1915(e)(2)(B). The Sixth Circuit Court of Appeals has held that a district court may dismiss as frivolous under §1915(e) a case that is duplicative of an earlier-filed action. *Peoples v. Reno*, No. 00–1086, 2000 WL 1477502, \* 1 (6th Cir. Sept. 26, 2000) (unpublished); *see also McWilliams v. State of Colo.*, 121 F.3d 573, 574 (10<sup>th</sup> Cir. 1997) (“Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious.”) (internal quotation marks omitted); *Cooper v. Delo*, 997 F.2d 376, 377 (8th Cir.1993); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir.1988).

### **Discussion**

In his current complaint, Plaintiff claims that defendants Gretchen Whitmer, Heidi Washington, Sherman Cambell, the Administrator of Bureau of Health Care Services, the Chief Medical Officer, Rosilyn Jindel, Syed Ayesha, and the Director of the Adrian Food Service Department have failed to take adequate steps to protect him from contracting the Coronavirus while incarcerated. Plaintiff previously filed a virtually identical lawsuit against the same defendants and raised the same claims, which remains pending before this Court in a separate case. *See Julian, et. al. v. Whitmer, et. al.*, No. 2:22-CV-12525 (E.D. Mich.).

Generally, when duplicative lawsuits are pending in separate federal courts, “the entire action should be decided by the court in which an action was first filed.”

*Smith v. S.E.C.*, 129 F.3d 356, 361 (6th Cir. 1997). “[A] suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.” *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993) (internal quotation marks and citations omitted). The Sixth Circuit has held that a district court “has broad discretion in determining whether to dismiss litigation or abstain in order to avoid duplicative proceedings.” *In re Camall Co.*, 16 Fed. Appx. 403, 408 (6th Cir. 2001) (citing *In Re White Motor Credit*, 761 F.2d 270, 274–75 (6th Cir. 1985)). Considering the substantial similarities between the parties, legal claims, factual allegations, and relief sought, in the present complaint and the previously filed complaint, the Court concludes that the present complaint should be dismissed as being duplicative of the complaint filed in Case No. 2:22-CV-12525.

### **Order**

**IT IS HEREBY ORDERED** that the complaint is **DISMISSED** for being duplicative of the complaint filed in Case No. 2:22-CV-12525.

**IT IS FURHTER ORDERED** that Plaintiff’s pending motion for appointment of counsel is **DENIED** as moot.

**IT IS SO ORDERED.**

**s/ Jonathan J.C. Grey**

Jonathan J.C. Grey

United States District Judge

Dated: July 24, 2023